

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 25 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0076-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
BOBBY DOMINGUEZ PIÑA,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR53939

Honorable Carmine Cornelio, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Bobby Dominguez Piña

San Luis  
In Propria Persona

K E L L Y, Judge.

¶1 Petitioner Bobby Piña challenges the trial court's summary dismissal of his second petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review and, for the following reasons, deny relief.

¶2 After a jury trial, Piña was convicted of first-degree murder, two counts of aggravated assault, and six counts of drive-by shooting. He was sentenced to life

imprisonment with no possibility of parole for thirty-five years on the murder count, to be served consecutively to terms totaling twenty-seven and one-half years on the aggravated assault and drive-by shooting counts. We affirmed the convictions and sentences on appeal. *State v. Pina*, No. 2 CA-CR 97-0426 (memorandum decision filed Nov. 12, 1998). Piña then filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., challenging the trial court's summary denial of relief on three claims of ineffective assistance of counsel. We denied relief on review. *State v. Pina*, No. 2 CA-CR 2000-0229-PR (memorandum decision filed Nov. 30, 2000).

¶3 Piña filed a second notice of post-conviction relief and a pro se petition in which he again alleged ineffective assistance of trial counsel and an additional claim of newly discovered evidence.<sup>1</sup> The trial court denied relief and summarily dismissed the petition, and this petition for review followed. We will not disturb the trial court's summary denial of post-conviction relief absent a clear abuse of the court's discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

### **Discussion**

¶4 On review, Piña challenges only the trial court's denial of his claims of ineffective assistance of counsel. He fails to address the court's finding that his claims

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<sup>1</sup>In his second petition, Piña cited Rule 32.1(h) as a ground for relief. Under this rule, a defendant may obtain post-conviction relief if he "demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would have found defendant guilty of the underlying offense beyond a reasonable doubt, or that the court would not have imposed the death penalty." Although Rule 32.2(b) provides that a claim on this ground may be excepted from preclusion, Piña neither developed an argument based on Rule 32.1(h) nor "set forth the substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner" as Rule 32.2(b) requires.

are precluded; instead, he merely reasserts the same ineffective assistance of counsel claims he raised in his petition below. Rule 32.2(a)(1) and (3) provide that “[a] defendant shall be precluded from relief under this rule based upon any ground” that is “[r]aisable on direct appeal” or “[t]hat has been waived at trial, on appeal, or in any previous collateral proceeding.” “[W]hen ‘ineffective assistance of counsel claims are raised . . . in a Rule 32 post-conviction relief proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded.’” *Swoopes*, 216 Ariz. 390, ¶¶ 23, 25, 166 P.3d at 952-53, *quoting State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002) (emphasis omitted). In its ruling denying the petition, the trial court correctly found Piña’s ineffective assistance claim precluded under Rule 32.2(a), because it had already been “thoroughly evaluated, adjudicated, and appealed.”

### Disposition

¶5 Because Piña’s claims are clearly precluded, the trial court properly denied his petition for post-conviction relief without conducting an evidentiary hearing. Accordingly, we grant the petition for review but deny relief.

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Presiding Judge